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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,789	09/18/2003	Ronald W. Fechter	03-143	6736

719 7590 12/16/2005

CATERPILLAR INC.
100 N.E. ADAMS STREET
PATENT DEPT.
PEORIA, IL 616296490

EXAMINER

MACARTHUR, VICTOR L

ART UNIT PAPER NUMBER

3679

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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10/665,789	9/18/2003	Ronald W. Fechter	03-143

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MacArthur

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20051208

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Commissioner for Patents

As noted in the previous Office Action and repeated herein, applicant's response is not compliant with 37 CFR 1.143 since the applicant has failed to elect an invention to be examined even though the requirement be traversed (37 CFR 1.143). The examiner notes that a Species was elected and the claims canceled and new claims presented. However, contrary to the applicant's traverse, the new claims do not obviate the invention restriction requirement. The applicant must elect one of the inventions that were originally presented. The examiner notes that new claims 21-27 are still drawn to a work machine which was originally presented by claims 19 and 20. If the applicant intends to elect the work machine a statement must be made to that effect for the record. The examiner further notes that claim 28 is drawn to a method of operating a work machine.

Applicant argues that a bona fide attempt at election was made such that an additional time period for reply should be granted. This is not persuasive since the applicant has repeatedly failed to make a proper election. The requirement to elect, and warning that failure to elect would be held non-responsive, was clearly set forth in the original Office Action Restriction Requirement of 6/28/2005. The Office Action Notice of Non-Compliance of 9/19/2005 restated the requirement to elect. The applicant has repeatedly (submissions of 7/29/2005 and 10/03/2005) failed to make a proper election of invention. The applicant has failed to state how repeated failure to elect, in the face of repeated detailed requirements thereto, constitutes a bona fide attempt at compliance.

Applicant argues that no election can be made since the applicant has amended the claims. This is not persuasive. While the applicant is permitted to amend the claims after a restriction requirement, this does not relieve the applicant of the obligation to make an election of one of the originally submitted inventions. Rather, following such an amendment, the applicant should make a proper election and then identify those claims (amended or otherwise) that are drawn to the elected invention.

As noted in the first paragraph above, restriction is still proper and the applicant is still required to make an election of invention. The time period for reply will not be extended from that originally set forth in the first Office Action Restriction Requirement.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600